

This letter discusses how sales tax is applied when a vehicle is replaced under the New Vehicle Buyer Protection Act (a.k.a. the "Lemon Law"), 815 ILCS 380/1 et seq. (This is a GIL.)

May 3, 2007

Dear Xxxxx:

This letter is in response to your letter received in Legal Services on September 14, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC repurchased my Altima '06 due to being unable to repair and after having the car for numerous days. (It qualified as a lemon both ways under State of IL guidelines. I have been told by ABC that I am only entitled to reimbursement of the state taxes I paid when I purchased the vehicle if I purchase another car from ABC. Is this correct? I was treated terribly as a consumer by the ABC Consumer Division and it saddens me to think that I may lose right at \$1700.00 of taxes paid to the state of IL because I was sold a [sic] inferior vehicle.

Thank you for your time,

DEPARTMENT'S RESPONSE

We apologize for the delay in responding to your letter.

When a dealer repurchases or replaces vehicles as required under the New Vehicle Buyer Protection Act, (815 ILCS 380/1 et seq.) the retailer may make a claim for a refund of the sales tax paid. If the proper amount of Retailers' Occupation Tax was remitted using form ST-556, the retailer must file form ST-556-X to claim a refund of the sales tax paid. Forms and instructions can be found on the Department's website.

Please note that Section 6 of the Retailers' Occupation Tax Act provides that "[f]or purposes of this Section, the tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department shall issue a credit memorandum or a refund for the amount of tax paid by the retailer under this Act attributable to the same restrictions and procedures provided for in this Act." 35 ILCS 120/6. See also 86 Ill. Adm. Code 130.1501(a)(1).

In order to file this claim, the dealer must first provide to the Department that he has unconditionally repaid the taxes to you. As section 130.1501(a)(3) explains, this procedure is a matter of business between you and the dealer – the dealer is not required by the tax laws to file a claim for credit. If a dealer does not agree to file a claim for credit on a transaction, the purchaser must enforce his right to collect the taxes as he would any other debt owed to him.

Please note that the claim provisions described above are not contingent in any manner on the purchase of another vehicle from the seller or any other person.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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